

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**DEFENDANT JELD-WEN, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT
ON COUNTS I AND IV OF PLAINTIFF STEVES AND SONS, INC.'S COMPLAINT**

Defendant JELD-WEN, Inc. (“JELD-WEN”), by counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby moves for an order granting summary judgment on Counts I and IV of the Complaint filed by Plaintiff Steves and Sons, Inc. (“Steves”) on June 29, 2016.

As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. Steves' claim under Section 4 of the Clayton Act fails because JELD-WEN's alleged breach of the Supply Agreement does not constitute antitrust injury, as a matter of law.
2. Steves' Section 4 claim also fails because Steves has conceded that it has not presented any evidence of the prices that it would have paid, or the quality of doorskins that would have been different, in the absence of JELD-WEN's acquisition of Craftmaster, Inc. ("CMI"). Proof of contract damages, i.e., the difference between the prices that Steves paid, and those it would have paid if JELD-WEN had not allegedly breached the contract, or proof of what

JELD-WEN allegedly owes Steves for defective doorskins, does not constitute proof of impact from the alleged antitrust violation, as a matter of law.

3. Steves' claim for future lost profits damages under Section 4 of the Clayton Act fails because Steves cannot recover future damages based on an injury that has not yet occurred, and that is based on a contingent and speculative chain of events that may or may not occur at some point in the future. Thus, Steves does not have constitutional standing to pursue this claim.

4. Steves is not entitled to divestiture under Section 16 of the Clayton Act as a matter of law. Steves' claim for relief is barred by the doctrine of laches because Steves inexcusably delayed for years in bringing this lawsuit, while JELD-WEN integrated the operations, employees, and assets of CMI into its own company. Steves' claims for future threatened antitrust injury are also impermissibly speculative, rendering divestiture unavailable as a matter of law.

5. This Court lacks jurisdiction to consider Steves' request for declaratory judgment regarding the termination date of the Supply Agreement (Count IV). JELD-WEN has agreed to the termination date requested by Steves in Count IV and that JELD-WEN will continue to supply Steves with doorskins until that date. There is no case or controversy for the Court to decide regarding the effective termination date of the Supply Agreement.

Dated: September 22, 2017

Respectfully submitted,

JELD-WEN, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September 2017, I will electronically file a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

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